

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALTAGRACIA J. PEGUERO,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,  
INC., THE SKLOVER GROUP, INC., and  
FEDERAL INSURANCE COMPANY,

Defendants.

Civil Action No. 05-10995-RCL

**DEFENDANT FEDERAL INSURANCE COMPANY'S  
MOTION TO DISMISS AND COMPEL ARBITRATION**  
**(Oral Argument Requested)**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and the Section 4 of the Federal Arbitration Act (9 U.S.C. § 4), the Defendant Federal Insurance Company ("Federal") moves to dismiss this case on the ground that all claims asserted by the Plaintiff Altagracia Peguero ("Peguero") are subject to the exclusive dispute resolution provision of the Catastrophic Injury and Accidental Disability insurance policy (the "Plan") underwritten by Federal. The Plan calls for resolution of all disputes through arbitration, and such arbitration is final and binding under the terms of the Federal Arbitration Act, 9 U.S.C. § 2. As such, Peguero has failed to state a claim upon which this Court may grant relief, and the First Amended Complaint should be dismissed.

In the alternative, Federal moves that the Court stay this proceeding pending arbitration, and compel Peguero to arbitrate the dispute, pursuant to 9 U.S.C. § 3.

In support of this motion, Federal submits a memorandum of law.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Federal Insurance Company respectfully requests oral argument on this motion.

By its attorneys,

/s/ Mark W. Corner

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*Attorneys for Defendant Federal Insurance Company*

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)**

Mark W. Corner, counsel of record for the Defendant Federal Insurance Company, hereby certifies that on May 31, 2005, Timothy Martin of the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, co-counsel to Federal Insurance Company, conferred by telephone with Kevin Donius, counsel to the Plaintiff, in an effort in good faith to resolve or narrow the issue presented in this motion, as required by Local Rule 7.1(A)(1), and that the parties were unable to resolve the issues raised in this motion.

**SIGNED UNDER THE PENALTIES OF PERJURY THIS 31<sup>st</sup> DAY OF  
MAY 2005.**

/s/ Mark W. Corner

**CERTIFICATE OF SERVICE**

I, Mark W. Corner hereby certify that on this date, May 31, 2005, I caused to be served the foregoing document, along with the accompanying Memorandum of Law, by electronic notice, upon the following counsel of record:

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/s/Mark W. Corner  
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